

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ERIC EDEN)	
)	
Plaintiff,)	
)	ID No. 04C-01-069 CLS
v.)	
)	
OBLATES OF ST. FRANCIS DE SALES;)	
OBLATES OF ST. FRANCIS DE SALES)	
INCORPORATED , a Delaware)	
Corporation;)	
SALESIANUM SCHOOL, INC. , a)	
Delaware corporation;)	
CATHOLIC DIOCESE OF)	
WILMINGTON, INC. , a Delaware)	
corporation;)	
REV. JAMES W. O'NEILL, O.S.F.S.;)	
REV. ROBERT D. KENNEY, O.S.F.S.;)	
REV. JOSEPH G. MORRISSEY,)	
O.S.F.S.;)	
REV. MICHAEL A. SALTARELLI; and,)	
REV. LOUIS S. FIORELLI, O.S.F.S.)	
)	
Defendants.)	

Date Submitted: April 18, 2007
Date Decided: April 27, 2007

*Upon Consideration of Defendants' Application for Certification of
Interlocutory Appeal*
DENIED.

Thomas S. Neuberger and Stephen J. Neuberger, Esquires, The Neuberger Firm, P.A., Wilmington, DE; Robert Jacobs and Thomas C. Crumplar, Esquires, Jacobs & Crumplar, P.A., Wilmington, Delaware, Attorneys for Plaintiff.

Mark. L. Reardon, Esquire, Elzufon, Austin, Reardon, Tarlov & Mondell, P.A., Wilmington, Delaware, Attorney for Defendants Oblates of St. Francis de Sales, Inc., Salesianum School, Inc., Rev. Robert D. Kenney, O.S.F.S., Rev. Joseph G. Morrissey, O.S.F.S., Rev. Louis S. Fiorelli, O.S.F.S.

Francis J. Trzuskowski, Esquire, Elzuvon, Augst, Reardon, Tarlove & Mondell, P.A., Bear, Delaware, Attorneys for the Defendant Rev. James W. O'Neill, O.S.F.S.

Anthony G. Flynn, Neilli Mullen Walsh and Jennifer M. Kinkus, Esquires, Young, Conaway, Stargatt & Taylor, LLP, Wilmington, Delaware, Attorneys for Defendants Catholic Diocese of Wilmington, Inc. and Rev. Michael A. Saltarelli.

SCOTT, J.

I. Background

On December 6, 2006, this Court denied the Motion to Dismiss or in the Alternative for Summary Judgment of Defendants Defendants Oblates of St. Francis De Sales, Salesianum School Inc., Reverend Robert D. Kenney, OSFS, Reverend Robert D. Kenney, OSFS, Reverend Joseph G. Morrissey, OSFS, Reverend Louis S. Fiorelli, OSFS, and Reverend James W. O'Neill, O.S.F.S. Defendants subsequently filed a Motion for Reargument in this matter, which the Court denied on March 30, 2007. Currently, Defendants have moved for an order certifying an interlocutory appeal to the Delaware Supreme Court of this Court's December 6, 2006 denial of the Motion for Summary Judgment.

II. Supreme Court Rule 42

Supreme Court Rule 42(b) provides the criteria to be applied in determining whether an issue should be certified from the trial court. In considering whether certification is proper, the court must conclude that (1) there is a substantial issue; (2) an established legal right exists; and (3) one or more of the following criteria apply:

- (a) any of the criteria applicable to proceedings for certification of questions of law set forth in Delaware Supreme Court Rule 41; or

- (b) the interlocutory order has sustained the controverted jurisdiction of the trial court; or
- (c) an order of the trial court has reversed or set aside a prior decision of the court, a jury, or an administrative agency from which an appeal was taken to the trial court which had determined a substantial issue and established a legal right, and a review of the interlocutory order may terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice; or
- (d) a review of the interlocutory order may terminate the litigation or may otherwise serve considerations of justice.¹

“Interlocutory appeals are addressed to the discretion of the Court and are accepted only in exceptional circumstances.”² Interlocutory appeals are only accepted where there are important and urgent reasons for an immediate determination.³ Generally, “an order directed to the pleadings falls within the class of interlocutory orders which are unappealable because it does not establish a legal right between the parties.”⁴ There may be, however, certain

¹ Del. Supr. Ct. R. 42(b); *see also Gardinier, Inc. v. Cities Serv. Co.*, 349 A.2d 744 (Del. Supr. 1975).

² *DVI Fin. Serv., Inc. v. Imaging Managing Associates, Inc.*, 1995 WL 269073 *1 (Del. Super.)(citing *The Wilmington Club v. Maroney*, 1989 WL 154708 *1 (Del. Supr.)).

³ *DVI Fin. Serv., Inc.*, 1995 WL 269073 at *1 (internal citation omitted).

⁴ *Levinson v. Conlon*, 385 A.2d 717, 720 (Del. Supr. 1978).

rulings on the pleadings that substantively affect the merits of the case or change the status of the parties that they should be appealable.⁵ That is not the situation presented by the instant appeal.

This Court entered an order based on the pleadings and limited discovery. Therefore, the Court did not establish a legal right. It simply looked at the record and determined that a genuine issue of fact exists with respect to the issues at hand. In fact, the Court's Opinion on the Motion for Reargument reiterated several times that material issues of fact exist and generally directed the parties to conduct more discovery on these issues prior to trial. A ruling that orders the parties to move forward with the litigation "is not the basis for an interlocutory appeal."⁶ The Court simply does not yet have enough evidence in order to make a determination here.

Furthermore, the Court finds that splitting the cause of action for alleged instances of abuse in the case *sub judice* does not present a substantial issue for appeal. The Court acknowledges that its December 6, 2006 decision on Defendants' Motion to Dismiss recognized "memory suppression" as a possible means to apply the discovery rule exception for the first time in Delaware. The Court emphasizes the term "possible" here because it did not

⁵ *Id.*

⁶ *Id.*; see also *Brunswick Corp. v. Bowl-Mor Co., Inc.*, 297 A.2d 67 (Del. 1972); *Cross v. Hair*, 258 A.2d 277 (Del. 1969).

establish a new rule or legal right for Plaintiff Eric Eden. In regard to whether Plaintiff's parents were on notice of his previous injuries, the Court essentially determined that this issue requires more facts.

As such, Defendants are not without a remedy. The litigation may be reviewed as the Court learns more facts, or in the alternative, after a final judgment.⁷ Finally, in the interest of judicial efficiency and economy, this Court is denying the application to avoid fragmentation of the case and delay in its final adjudication.⁸

Due to the foregoing reasons, Defendant's Application to Certify the Interlocutory Appeal is **DENIED**.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.

⁷ See *Castaldo v. Pittsburgh-Des Moines Steel Co., Inc.*, 301 A2d 87, 88 (Del. 1973)(holding that the parties would not be substantially harmed by the denial of the interlocutory appeal because they could have their claims reviewed upon a final decision on the merits.).

⁸ *Levinson*, 385 A.2d 720.